Philadelphia area, dispose of appreciable quantities of such refuse in New Jersey, then I instruct you that the interstate commerce element of the offense with which the defendants are charged has been established." (R. 136a.) The court then distinguished between casual dumping and dumping that has "any degree of consistency or regularity, or involves any appreciable quantity" (R. 136a). In response to objection by petitioners, the court told the jury in a supplemental charge that "appreciable" was a vague term and reminded it (R. 164a–165a) that he had said:

> * * * you are to consider that [the term "appreciable"] as opposed to, as I think I used the expression, a casual load or two taken over to New Jersey. All I mean to convey to you, members of the jury, is that there was a sufficient movement of such trash from Pennsylvania to New Jersey that it could not be characterized as something that was just casual or inadvertent.
>
> If you find that this was a part of a regular and consistent movement of trash from Pennsylvania to New Jersey, if you find that was part of the business of removing trash from Philadelphia area by these refuse collectors who operate in the Philadelphia area, then I say to you that the interstate commerce aspect of the crime has been established.

The court then asked counsel, "Anything further, gentlemen?", and counsel for defendants answered, "No, sir" (R. 165a).

On appeal, petitioners conceded that if their conduct occurred in interstate commerce, it violated the

Sherman Act (Pet. 6). But they argued that it did not occur in interstate commerce and that the trial judge improperly removed the commerce issue from the jury because (petitioners contended) he told the jury that the movement of refuse to New Jersey could not be characterized as casual or inadvertent (Pet. App A 41). The court of appeals rejected petitioners' contentions and affirmed (Pet. App. A).[3]

ARGUMENT

The questions presented were correctly decided by the court of appeals. There is no issue warranting further review.

1. Fifteen witnesses testified without dispute that refuse was regularly dumped in New Jersey by members of the Association, and there was abundant evidence to support the finding by both courts below that petitioners' business was an integrated collection and disposal service for which the customer paid a single charge. Since an essential part of the business involved the regular movement of goods across State lines, it was within the reach of the federal commerce power (see, *e.g., Atlanta Motel* v. *United States,* 379 U.S. 241, 255–257; *Labor Board* v. *Fainblatt,* 306 U.S. 601, 606; *Hoke v. United States,* 227 U.S. 308; *United States* v. *Hill,* 248 U.S. 420) and hence subject to the Sherman Act (see, *e.g., Apex Hosiery Co.* v. *Leader,* 310 U.S. 469, 495; *United States* v. *Frankfort Distil-*

[3] The same contentions had previously been made in petitioner's post-verdict motion for acquittal or for a new trial, which the district court denied in a memorandum opinion (R. 202a–212a).

leries, 324 U.S. 293, 298; *United States* v. *South-Eastern Underwriters Assn.,* 322 U.S. 533).

2. The trial judge did not withdraw from the jury the underlying factual question of whether the movement of refuse to New Jersey was regular.[4] The trial court had instructed the jury in its basic charge that, "[*i*]*f you* find from the evidence * * * that refuse removers * * * dispose of appreciable quantities of * * * refuse in New Jersey * * *" (R. 136a; emphasis added), the requisite effects on interstate commerce would be established. In his supplemental charge he re-emphasized "*if you* find that refuse removers pick up trash in Pennsylvania and haul an appreciable quantity to New Jersey [etc.] * * *" (R. 164a; emphasis added). And after explaining the term "appreciable quantity" he again emphasized that "*if you* find that this was part of a regular and consistent movement * * *, [and] *if you* find that was part of the business of removing trash from Philadelphia area * * * then I say to you that the interstate commerce aspect of the crime has been established" (R. 165a; emphasis added). The failure of petitioners' counsel to object indicates that they and all present understood the court to mean that the jury must find a regular interstate movement of trash to convict.

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[4] We note that petitioners did not make a timely objection to the charge on this ground. Their failure to give the judge an opportunity to correct any ambiguities in his supplemental charge is itself sufficient reason to bar further consideration of their contention. F.R. Crim. P. 30; *Stegall* v. *United States,* 279 F. 2d 872 (C.A. 6), certiorari denied, 364 U.S. 915; *Moore* v. *United States,* 262 F. 2d 216 (C.A. D.C.), certiorari denied, 359 U.S. 959.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted.

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